

Summary of Proposed Local Rule 11.4.7

The proposed amendment to the court's local rule is summarized below. Immediately following the summary, you will find the full text of the proposed changes with deletions noted in ~~strike~~ and proposed additions noted in underline.

☐ **RULE 11.4.7 – Impartial Expert**

- The proposed amendment complies with the requirements of California Rules of Court, Rule 5.220 which states in section (d)(1)(A)(v) that each court must adopt local rules within one year of this rule's effective date to address ex parte communication.

RULE 11.4 CHILD CUSTODY EVALUATIONS

1. Evaluations Court Ordered: The Court shall order all child custody and visitation evaluations and evaluators will be appointed under Evidence Code Section 730. The Court reserves the right to refuse to consider evaluations that have not been approved and ordered by the Court. Court ordered child custody evaluations shall be conducted in accordance with California Rules of Court, Rule 5.220.

2. Custody Evaluation Witness Lists: Within 15 days of an order for an evaluation, each party shall submit to the evaluator the name, address, and telephone number of each person a party requests to be interviewed in connection with the evaluation, and a summary of the relevant information each person possesses. The evaluator is not bound to interview any such person, and may use his or her judgment in determining whether to interview each person. The Court may in its discretion prohibit a party from calling as a witness any person whose name, relevant information and expected testimony have not been given to the evaluator.

3. Custody Evaluator Selection: In the event that the parties cannot agree upon an evaluator, the Court may ask Family and Children's Bureau for a recommendation, or may solicit names of potential evaluators from the parties, when selecting a private evaluator. Insofar as possible, the selected evaluator will be one agreed upon by both parties. In the instance of lack of agreement between the parties, or in the instance of the Court's interest in the particular expertise of an evaluator for the family, the Court will select the evaluator. An evaluator shall not be eligible for selection unless he or she meets the qualifications set forth in the provisions of Family Code §3110.5 and California Rules of Court, Rule 5.225.

In the rare instance where a staff member of the Family and Children's Bureau is ordered to evaluate, the Supervising Counselor will select the evaluator. Parties may inform the Supervising Counselor of any special needs or requirements of the evaluator.

4. Scope of the Evaluation: Scope of the Evaluation: In the interest of saving parties time, expense and stress, the evaluation may be limited in scope to the question or questions that the Court requires answered or those questions agreed upon by the parties.

5. Challenge of the Evaluator: (CRC Rule 5.220(d)(1)(ii)). No peremptory challenge of evaluators shall be allowed. Parties may raise objections to a specific evaluator during the selection process. Parties may object to the conclusions of the report when the report is submitted to the Court, and may bring other appropriate expert testimony to object to the conclusions.

6. Information from Children: (CRC Rule 5.220 (d) (1) (C)). The Court relies on the judgment of its experts in making decisions about when, how often, and under what circumstances children are interviewed. The expert shall be able to justify the strategy used in any particular case. Except in extraordinary circumstances, including the potential for danger to a child, children will be informed that the information provided by a child will not be confidential.

7. Impartial Expert: The Court appointed evaluator shall be impartial. Evaluations should include interviews of both parents and/or guardians. Exceptions to this may include geographically separated parents. In such instances, attorneys, parties and the expert are expected to make reasonable accommodations to assure that the expert has received adequate information about all parents, guardians, or children. Except as directed by the child custody evaluator during the evaluation process, no party, or party's attorney, is permitted to have any ex parte communication with the appointed evaluator.

8. Expectation of Settlement: The evaluator, the parties, and the attorneys should make a good faith attempt to settle the disputes prior to the court hearing. Settlement efforts may include meet and confer conferences between the parties and counsel unless potential harm exists from this process.

9. Continuing Effort: The Court may ask the evaluator to continue to be available to the family to help resolve problems with the recommended and ordered plan.

10. Payment of the Evaluation: The Court will order payment of the evaluation at the time of the appointment. The evaluator may not withhold a report because of the parties' failure to pay. The evaluator may bring the issue of a parties' failure to pay to the Court. The evaluator is not required to commence the evaluation process until the payment ordered by the evaluator has been paid to the evaluator.

11. Provision of Reports: Pursuant to Family Code Section 3111 and California Rules of Court, Rule 5.220, the Evaluator shall provide his/her report to the Court at least ten (10) days prior to any hearing on or other action which is the subject of the report unless otherwise ordered by the Court. The Evaluator shall also provide a copy of the report to counsel for each party, who may provide a copy to that party, or if the party is self-represented, directly to the party and to appointed counsel for the child(ren). The evaluator shall further provide a copy of the report to the Families and Children's Bureau Alternative Dispute Resolution Services' Supervising Counselor. Neither the parties nor their attorneys shall show or provide copies of the report to anyone other than an expert hired by a party in connection with the custody proceedings, the therapists for the minor children of the parties, or subsequent counsel for either party in connection with the custody proceedings.

12. Court Use of Report: Per Family Code §3111(a), the report of the private evaluator may be considered by the Court. Counsel for the parties and the parties are strongly urged to stipulate at the time that the private evaluator is appointed that the report will be admitted into evidence subject to cross examination and/or motion to strike all or part.

13. Child Custody Evaluation Complaint Process: The procedure for pursuing a complaint concerning the professional conduct of a court appointed child custody evaluator shall be as follows:

- A. A person having a complaint regarding the professional conduct of a court-connected or court-employed child custody evaluator may
 - (1) Register the complaint verbally or in writing with the Supervising Counselor. The Supervising Counselor will make a record of the complaint, and will

respond to the complainant within three business days by telephone, if possible, or letter acknowledging receipt of the complaint.

- (2) Within ten business days of receipt of the complaint, the Supervising Counselor will review the matter, confer with the child custody evaluator, and as appropriate, resolve the matter directly with the complainant. The Supervising Counselor will confirm the resolution of the matter with the complainant by calling or writing to the complainant with the results of his/her review and determination.
 - (3) Complainant may appeal the Supervising Counselor's action in writing to the Chief of the Families & Children's Bureau, who will, as appropriate, refer the complaint to the Bureau's Policy and Procedural Review Committee for review and recommended action. The Bureau Chief will acknowledge, in writing, receipt of the complaint within five business days of receipt.
 - (4) The Policy and Procedural Review Committee will review the complaint within the next 10 business days and make a recommendation for action to the Bureau Chief. The Bureau Chief will respond in writing to the complainant within the next 10 business days. The complainant may appeal the action of the Bureau Chief in writing, to the Court's Executive Officer who will rule in writing on the complaint within 15 business days.
- B.** A person having a complaint regarding the professional conduct of a court appointed, private, non-court connected or non-employed child custody evaluator may:
- (5) Contact the Chief of the Families & Children's Bureau in writing;
 - (6) The Chief of the Families & Children's Bureau who will inform the complainant that the Court has no authority to investigate complaints against private child custody evaluators and will inform the complainant regarding the process for registering complaints at the state licensing board level against private (i.e., non-court-connected or court- employed) child custody evaluators.

(Effective 5/19/98; Amended 1/1/04 [and 7/1/06](#))